No. 13228

United States
Court of Appeals
for the Ninth Circuit.

GEORGE EARL TOOLSON,

Appellant.

vs.

NEW YORK YANKEES, INC., et al.,

Appellees.

Transcript of Record

Appeal from the United States District Court for the Southern District of California, Central Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

No. 13228

Claire Sinna

Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, omissions or matter appearing in the original certified record is printed and enclosed herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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634 S. Spring St.,
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United States District Court, Southern District of California, Central Division

No. 13070-BH Civil

GEORGE EARL TOOLSON,

Plaintiff,

vs.

NEW YORK YANKEES, INC., a Corporation; AMERICAN LEAGUE OF PROFESSIONAL BASEBALL CLUBS, an Unincorporated Association; NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, an Unincorporated Association; NATIONAL ASSOCIATION OF PROFESSIONAL BASEBALL LEAGUES, an Unincorporated Association; GEORGE M. TRAUTMAN; PACIFIC COAST LEAGUE OF PROFESSIONAL BASEBALL CLUBS, an Unincorporated Association; HOLLYWOOD BASEBALL ASSOCIATION, a Corporation; LOS ANGELES BASEBALL CLUB, a Corporation; BINGHAMPTON EXHIBITION COMPANY, INC., a Corporation; CLARENCE H. ROWLAND,

Defendants.

COMPLAINT FOR TREBLE DAMAGES

Comes now the Plaintiff, George Earl Toolson, by Ross & Harris, his attorneys, and for a first cause of action alleges:

I.

The action arises under the Sherman Act, 26 Stat. 209; U. S. C. 15, Secs. 1 and 2 and the Clayton Act 38 Stat. 741, U. S. C. Sec. 15, as hereinafter more fully appears. [2*]

II.

That George Earl Toolson, the Plaintiff herein, during all times herein mentioned, was, and now is, a highly skilled, professional baseball player; that the services of Plaintiff as such professional baseball player were at all times herein mentioned, and now are of the reasonable value of $15,000.00 per year;

III.

That the New York Yankees, Inc., a corporation; The Hollywood Baseball Association, a corporation; the Los Angeles Baseball Club, a corporation; the Binghamton Exhibition Company, Inc., a corporation, are each corporations organized and existing under the laws of one or more of the states of the United States; that the Defendants, American League of Professional Baseball Clubs, an unincorporated association; the National League of Professional Baseball Clubs, an unincorporated association; the Pacific Coast League of Professional Baseball Clubs, an unincorporated association; the National Association of Professional Baseball Leagues, and each of them, are voluntary unincorporated associations existing under the laws of one

*Page numbering appearing at foot of page of original Certified Transcript of Record.

or more of the states of the United States and under the laws of the United States of America.

IV.

That the Defendants, Pacific Coast League of Professional Baseball Clubs, an unincorporated association; the Hollywood Baseball Association, a corporation; the Los Angeles Baseball Club, a corporation, and each of them, have their principal offices for the transaction of business in the Southern District of California, Central Division.

V.

That the Defendants, New York Yankees, Inc., a corporation; the Binghamton Exhibition Company, Inc., a corporation; the American [3] League of Professional Baseball Clubs, an unincorporated association; the National League of Professional Baseball Clubs, an unincorporated association; the National Association of Professional Baseball Leagues, an unincorporated association, are found and have agents and are doing business in the Southern District of California, in that said Defendants control, produce and exhibit baseball games to the public for paid admission in the Southern District of California; that said Defendants, under highly remunerative contracts, exhibit baseball games by means of direct radio narration and television picture in the Southern District of California; that said Defendants are constantly buying, selling, negotiating for and dealing in baseball players contracts in the Southern District of California;

that said Defendants have their agents or scouts continuously in the Southern District of California attempting to find and develop baseball talent.

VI.

That Defendant, Clarence H. Rowland, is the President of Defendant Pacific Coast League of Professional Baseball Clubs and resides in the Southern District of California; that the Defendant, George M. Trautman, is the President of the Defendant, National Association of Professional Baseball Leagues.

VII.

That at all times herein mentioned the Defendant, New York Yankees, Inc., owned, operated and controlled the Newark International Baseball Club, Inc., and the Defendant, Binghamton Exhibition Company, Inc.

VIII.

That the Defendants are engaged in the business of producing professional baseball games for exhibition; that the business of professional baseball in the United States is conducted by the various professional teams playing games against each other for exhibition to the general public. That the teams are composed of [4] highly skilled players under contract for their services to the Club owning and operating that team. To facilitate this business the professional teams or clubs are organized into leagues. These leagues are organized from Clubs in certain geographic areas and from Clubs whose players are that of the same general abilities. Each

Club then plays games for exhibition with each of the other Clubs in its league during the baseball season, which is normally from the middle of the month of April to the end of the month of September each year.

The Defendants, American League of Professional Baseball Clubs and the National League of Professional Baseball Clubs, are designated the Major Leagues. These leagues are composed of eight teams each of whose players are the most highly skilled in the game. The Defendant, The New York Yankees, Inc., a corporation, is a member of the Defendant, American League of Professional Baseball Clubs, an unincorporated association. All of the other leagues in professional baseball are designated as Minor Leagues, and their teams are designated as Minor League teams. That all of the Minor League teams are members of the various so-called Minor Leagues; that each Minor League is a member of the Defendant, National Association of Professional Baseball Leagues, an unincorporated association. That all of professional baseball in the United States is a part of the above-outlined organization. That the Defendant, Pacific Coast League of Professional Baseball Clubs, is a member of Defendant, National Association of Professional Baseball Leagues, that the Defendant, Hollywood Baseball Association, a corporation, the Los Angeles Baseball Club, a corporation, and the Binghamton Exhibition Company, Inc., a corporation, are members of Minor Leagues, which leagues

are members of Defendant, National Association of Professional Baseball Leagues.

IX.

That each baseball game is played on the home ball grounds [5] of one of the teams; that each ball ground is enclosed from the public; that the public is charged an admission fee to see each exhibition; that the various teams and leagues and the Defendants herein enter into contracts, for large payments of money, with radio broadcasting and television companies, by which the various clubs cooperate with the radio broadcasting and television companies, in producing the baseball games and transmitting them by narration and as a television picture to the outside public in the various states of the United States. That the aforesaid production of games and narration by radio and transmittal by television to the outside public in the various states of the United States is a substantial part of the business of professional baseball in that the receipts from such activities exceeds $1,000,000.00 each year and exceeds the sum of 20% of the net profits of professional baseball each year.

X.

That all of the baseball clubs in organized professional baseball are members of the Defendant National League of Professional Baseball Clubs, the Defendant American League of Professional Baseball Clubs or of a league which is a member of the Defendant National Association of Professional Baseball Leagues.

XI.

That the Defendants, and each of them, have entered into or agreed to be bound by a contract in the restraint of Interstate Commerce; that said contract is designated as the Major-Minor League Agreement, dated December 6, 1946, and provides in effect that:

1. All players' contracts in the Major Leagues shall be of one form and that all players' contracts in the Minor Leagues shall be of one form.

2. That all players' contracts in any league must [6] provide that the Club or any assignee thereof shall have the option to renew the player's contract each year and that the player shall not play for any other club but the club with which he has a contract or the assignee thereof.

3. That each club shall, on or before a certain date each year, designate a reserve list of active and eligible players which it desires to reserve for the ensuing year. That no player on such a reserve list may thereafter be eligible to play for any other club until his contract has been assigned or until he has been released.

4. That the player shall be bound by any assignment of his contract by the club, and that his remuneration shall be the same as that usually paid by the assignee club to other players of like ability.

5. That there shall be no negotiations between a player and any other club from the one which he is under contract or reservation respecting em-

ployment either present or prospective unless the Club with which the player is connected shall have in writing expressly authorized such negotiations prior to their commencement.

6. That in the case of Major League players, the Commissioner of Baseball and in the case of Minor League players, the President of the National Association, may determine that the best interests of the game require a player to be declared ineligible and, after such declaration, no club shall be permitted to employ him unless he shall have been reinstated from the ineligible list.

7. That an ineligible player whose name is omitted from a reserve list shall not thereby be rendered eligible for service unless and until he has applied for and been granted reinstatement.

8. That any player who violates his contract or reservation, or who participates in a game with or against a club containing [7] or controlled by ineligible players or a player under indictment for conduct detrimental to the good repute of professional baseball, shall be considered an ineligible player and placed on the ineligible list.

9. That an ineligible player must be reinstated before he may be released from his contract.

10. That clubs shall not tender contracts to ineligible players until they are reinstated.

11. That no club may release unconditionally an ineligible player unless such player is first reinstated from the ineligible list to the active list.

XII.

That Plaintiff was under contract with the Newark International Baseball Club, Inc.; that said Club was a Class AAA Club; that said Club assigned Plaintiff's contract to the Binghamton Exhibition Company, Inc., a Class A team; that Plaintiff refused to report to said assignee; that the Defendant, George M. Trautman, placed Plaintiff on the ineligible list of the Binghamton Exhibition Company, Inc., on the 25th day of May, 1950; that Plaintiff has been held and is still held on such ineligible list at this time.

XIII.

That by reason of Plaintiff being placed and held on said ineligible list as hereinabove set out and the making of the aforementioned contract by the Defendants, the Defendant, and each of them, have refused since the 25th day of May, 1950, and still do refuse to allow Plaintiff to play professional baseball, and that Plaintiff has thereby been deprived of his means of livelihood, all to the Plaintiff's damages in the sum of $125,000.00.

XIV.

That to prosecute this action, Plaintiff has been compelled to retain attorneys and legal counsel; that Plaintiff has [8] retained Harry W. T. Ross, Gene M. Harris and Howard C. Parke as his attorneys in this action, and that their said services to Plaintiff in prosecuting this action are of a reasonable value in an amount yet to be determined;

that when Plaintiff has determined said amount leave of this Honorable Court will be asked to amend this pleading and insert the amount of said reasonable value.

For a Second, Separate and Distinct Cause of Action, Plaintiff Alleges:

I.

The Plaintiff adopts by reference and incorporates herein as though set out in full Paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XII and XIV of his first cause of action.

II.

That the Defendants and each of them, have entered into a combination and conspiracy in the restraint of trade or commerce among the several states of the United States; that the Defendants, and each of them, have combined together and formed a common design and agreement to control professional baseball in the United States, in that Defendants, and each of them, have combined together and agreed as follows, to wit:

1. The Plaintiff adopts by reference, and incorporates herein as though set out in full subparagraphs 1 through 11, inclusive, of Paragraph XI of his first cause of action.

III.

That by reason of Plaintiff being placed or held on said ineligible list as hereinabove set out and

the combination and conspiracy of the Defendants as above set out, the [9] Defendants, and each of them, have refused since the 25th day of May, 1950, and still do refuse to allow Plaintiff to play professional baseball, and that Plaintiff has thereby been deprived of his means of livelihood, all to the Plaintiff's damages in the sum of $125,000.00.

For a Third, Separate and Distinct Cause of Action, Plaintiff Alleges:

I.

The Plaintiff adopts by reference, and incorporates herein, as though set out in full, Paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XII and XIV of his first cause of action.

II.

That the Defendants and each of them, have combined together to monopolize professional baseball in the United States, in that the Defendants have agreed as follows, to wit:

1. The Plaintiff adopts by reference, and incorporates herein, as though set out in full, subparagraphs 1 through 11, inclusive, of Paragraph XI of the first cause of action.

2. That certain designated cities only shall constitute the circuits of the Defendants, National League of Professional Baseball Clubs and American League of Professional Baseball Clubs; that these circuits thus established shall remain unchanged either by withdrawal from a city, or in-

clusion of another city or by consolidation of clubs within a city, unless in any case the changes approved by the majority of the clubs in such league, except that the circuit of either Major Leagues shall not be changed except by the unanimous consent of the clubs constituting said league.

3. That to protect the Major Leagues and their constituent clubs in the operation of their franchises in the cities comprising [10] the circuits established and to safeguard the rights of such franchises, the following restrictions on the broadcast or telecast of Major League games were adopted:

(a) Each Major League club may broadcast or telecast its games (both home and away from home) from a station located within its "home territory."

(b) No Major League club shall consent to or authorize a broadcast or telecast (including rebroadcast or network broadcast) of any of its games to be made from a station outside its "home territory" and within the "home territory" of any other baseball club, Major or Minor, without the consent of such other baseball club.

"The words 'home territory' shall mean and include, with respect to any baseball club, the territory included within the circumference of a circle having a radius of fifty (50) miles, with its center at the baseball park of such baseball club."

4. No player shall participate in any exhibition game with or against any team which, during the current season or within one year, has had any ineligible player or which is, or has been during

the current season or within one year, managed and controlled by an ineligible player or by any person who is listed an ineligible player under an assumed name or who otherwise violated, or attempted to violate any exhibition game contract; or with or against any team which during said season or within one year has played against teams containing such ineligible players, or so managed or controlled.

5. No Club owning or controlling its park shall allow its park to be used for any exhibition game involving violation of the Major League Rules, the Major-Minor League Rules, or the National Association Agreement. All contracts, agreements or arrangements made by a Club for the use of its park or facilities [11] for such exhibition games shall stipulate that the teams participating in such exhibition games shall not use any ineligible players, and, in connection with exhibition games played before or after the regular baseball season, shall not use any players in violation of the Major League Rules, the Major-Minor League Rules or the National Association Agreements.

6. That the existing circuits in the Minor League shall not be so changed as to include any city in the Major League circuit or any place within five miles thereof without the written consent of the league concerned.

7. That certain indebtednesses of each Club shall become liens against the territory that Club reprents. A league membership shall not be extended to any Club in said city until such debts are dis-

charged; that such lien shall terminate at the end of five years from the date they were established.

2. (a) Each league whose application for membership under the Agreement has been accepted and which has become a member thereof, shall have control of its territory until its membership is terminated in the manner and form provided for in this Agreement.

(b) Territorial protection shall cover the entire area within the limits of each city in which a franchise is granted and operated and, in addition, all territory within 10 miles in all directions from the city limits of the protected city, including the entire area of any town, city, or village of which any portion is located within the 10-mile area.

(c) Upon a league granting any person, firm or corporation membership in its league for the purpose of operating a baseball franchise in a city, such membership shall carry with it protected territorial rights for the area within said city limits and within the ten-mile area above referred to. Such rights shall continue during the life of said membership.

(d) No club member of any league party to this Agreement, [12] nor any player under control of such club, shall be allowed to play or participate in any game of baseball played within the territorial limits of any club member of any other league party franchise operating in said territory and without consent of the president and directors of the league of which said protected club is a member,

nor shall the right to operate an additional franchise within such protected territory be granted to anyone without such consent.

(f) To protect the members of the National Association and their respective constituent clubs in the operation of their franchise in the cities comprising the respective circuits and to safeguard the rights of such franchises it is provided:

(1) Each club may broadcast or telecast or permit to be broadcast or telecast its home games from a station or stations located within its "home territory" but not otherwise, and the visiting club may, with the consent of the home club, broadcast or telecast or cause to be broadcast or telecast to its "home territory" from a station or stations, within its home territory, baseball games in which it participates away from home; provided, however, that nothing herein shall be deemed to prevent a broadcast or telecast of a baseball game by any club, which does not constitute an infringement of the territorial rights of other clubs as defined in subparagraphs (2) and (3) of this paragraph (f).

(2) The words "home territory" shall mean and include, with respect to any baseball club, the territory included within the circumference of a circle having a radius of 50 miles, with its center at the baseball park of such baseball club.

(3) The protection given territorial rights

of each club as hereinabove set forth shall be deemed to include [13] protection against broadcasts and telecasts other than those disseminated by a station or stations in the home territory of the other clubs.

9. No player shall be permitted to play baseball, during the playing season of the Club to which he is under contract or reservation, in any tournament or game not under the supervision of The National Association of Professional Baseball League.

10. Any club, party to or identified with this agreement, which shall enter into any negotiation to become a member of or in any way cooperate with any organization of professional baseball clubs whose existence will in any manner conflict with the letter and spirit of this agreement, or the interests of any of the clubs operating under it, shall thereby automatically forfeit all rights and privileges conferred by this agreement, including membership in any league party to this agreement, and all right to hold and/or reserve players' contracts.

III.

That by reason of Plaintiff being placed and held on said ineligible list as hereinabove set out and the combination of the Defendants to monopolize professional baseball in the United States as hereinabove set forth, Defendants, and each of them, have refused since the 25th day of May, 1950, and still do refuse to allow Plaintiff to play professional baseball, and that Plaintiff has thereby been de-

prived of his means of livelihood all to Plaintiff's damages in the sum of $125,000.00.

Wherefore, the Plaintiff prays judgment against the Defendants, and each of them, as follows:

1. For $375,000.00 as treble Plaintiff's damages.
2. For reasonable attorney's fees.
3. For costs of suit incurred herein. [14]
4. For such other relief as the Court may deem meet.

Dated May 1, 1951.

HARRY W. T. ROSS,
GENE M. HARRIS,
HOWARD C. PARKE,
By /s/ HOWARD C. PARKE,
Attorneys for Plaintiff.

[Endorsed]: Filed May 1, 1951. [15]

[Title of District Court and Cause.]

STIPULATION AND ORDER

Whereas, the plaintiff caused process to be served upon the defendant, New York Yankees, Inc., a corporation, in the City of New York, State of New York, on the 8th day of May, 1951; and

Whereas, the court on May 28, 1951, duly and regularly made and entered its order extending the

time within which said defendant, New York Yankees, Inc., could appear generally or specially and answer or make any motion permitted by Rule 12 (b) of the Rules of Federal Procedure, including objections as to the jurisdiction of the court and as to the venue of the action, to and including the 4th day of June, 1951; and

Whereas, by orders duly made and entered on June 1, 1951, on the stipulation of the parties, the time of the New York Yankees, Inc., to so appear generally and specially was extended to and including the 30th day of June, 1951; and

Whereas, it has been found that further and additional time [16] is necessary for the said defendant, New York Yankees, Inc., to obtain affidavits in support of motions that it intends to make and to prepare the necessary points and authorities in support thereof; and

Whereas, counsel for plaintiff believes it may be necessary for them to have additional time beyond the time provided by the rules within which to study the points and authorities filed by defendant, New York Yankees, Inc., in support of any motions made by said Club;

Now, Therefore, It is Stipulated that the time within which the New York Yankees, Inc., may appear either generally or specially and answer or make any motion permitted by Rule 12 (b) of the Federal Rules of Procedure, including objection to the jurisdiction of the Court or to the venue of the action, is hereby enlarged and extended to and including the 30th day of July, 1951.

And It Is Further Stipulated that the said plaintiff may have thirty days after the filing by said defendant of any motion or motions, with points and authorities in support thereof, within which to file answering points and authorities on behalf of said plaintiff.

Dated Los Angeles, California, June 15, 1951.

HARRY W. T. ROSS,
GENE M. HARRIS,
HOWARD C. PARKE,
By /s/ HOWARD C. PARKE,
Attorneys for Plaintiff.

NORMAN S. STERRY,
HENRY F. PRINCE,
FREDERIC H. STURDY,
PHILIP C. STERRY,
GIBSON, DUNN & CRUTCHER,
By /s/ NORMAN S. STERRY,
Attorneys for Defendant New York Yankees, Inc., a Corporation.

ORDER

It Is So Ordered. Dated June 19, 1951.

/s/ BEN HARRISON,
Judge, United States District Court.

Receipt of copy acknowledged.

[Endorsed]: Filed June 20, 1951. [17]

[Title of District Court and Cause.]

STIPULATION AND ORDER

Whereas, by orders duly made and entered upon the stipulations of the parties, the time within which the defendants, Pacific Coast League of Professional Baseball Clubs, Los Angeles Baseball Club, Hollywood Baseball Association and Clarence H. Rowland, to appear and plead to the Complaint on file herein, by answer or motion, has been enlarged and extended to the 30th day of June, 1951; and

Whereas, the defendant, New York Yankees, Inc., was served in the City of New York, State of New York, on the 8th day of May, 1951; and

Whereas, the time within which said defendant, New York [19] Yankees, Inc., could appear either generally or specially and make any motion permitted by Rule 12 (b) of the Rules of Federal Procedure, including objections to the jurisdiction of the Court and to the venue of the action by orders duly made and entered has been enlarged and extended to and including June 30, 1951; and

Whereas, said counsel for plaintiff and counsel for defendant, New York Yankees, Inc., have, subject to the approval of the Court, stipulated for the enlargement and extension of time within which said New York Yankees, Inc., may so appear and plead to the 30th day of July, 1951; and

Whereas, it is deemed advantageous to all parties that the time of the other defendants so far served, to wit, Pacific Coast League of Professional Baseball Clubs, Los Angeles Baseball Club, Hollywood

Baseball Club and Clarence H. Rowland be enlarged and extended to the same time; and

Whereas, in addition to the foregoing considerations, it is necessary for counsel for defendant to have further time beyond the 30th day of June, 1951, within which to properly prepare points and authorities in support of motions which the said defendants intend to make; and

Whereas, counsel for plaintiff believes they may need additional time beyond that permitted by the rules within which to study the points and authorities filed by the said defendants and in which to file answering points and authorities;

Now, Therefore, It Is Stipulated that the time within which said defendants, Pacific Coast League of Professional Baseball Clubs, Los Angeles Baseball Club, Hollywood Baseball Association and Clarence H. Rowland, may appear and plead to the Complaint on file in the above-entitled action by answer or motion be, and the same hereby is, enlarged and extended to and including July 30, 1951.

And It Is Further Stipulated that the said plaintiff may have thirty days after the filing by said defendants of any motion [20] or motions, with points and authorities in support thereof, within which to file answering points and authorities on behalf of said plaintiff.

Dated Los Angeles, California, June 15, 1951.

HARRY W. T. ROSS,
GENE M. HARRIS,
HOWARD C. PARKE,
By /s/ HOWARD C. PARKE,
Attorneys for Plaintiff.

VICTOR FORD COLLINS,
Attorney for Hollywood Baseball Association, a Corporation.

NORMAN S. STERRY,
HENRY F. PRINCE,
FREDERIC H. STURDY,
PHILIP C. STERRY,
GIBSON, DUNN & CRUTCHER,

By /s/ NORMAN S. STERRY,
Attorneys for Defendants, Pacific Coast League of Professional Baseball Clubs, an Unincorporated Association; Los Angeles Baseball Club, a Corporation; Hollywood Baseball Association, a Corporation, and Clarence H. Rowland.

ORDER

It Is So Ordered. Dated Los Angeles, California, June 19, 1951.

/s/ BEN HARRISON,
Judge of the United States District Court.

Receipt of copy acknowledged.

[Endorsed]: Filed June 20, 1951. [21]

[Title of District Court and Cause.]

MOTION TO DISMISS FOR LACK OF JURISDICTION OVER THE SUBJECT MATTER AND FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Come Now the defendants, Pacific Coast League of Professional Baseball Clubs, Los Angeles Baseball Club, Hollywood Baseball Association and Clarence H. Rowland, and appearing separately, each for itself or himself and not for any other person, firm or corporation, each said defendant separately moves the Court as follows:

1. For an order dismissing the action and each alleged cause of action set out in the complaint, on the ground that the Court lacks jurisdiction over the subject matter of the cause of action.

2. For an order dismissing the action, and each alleged cause of action set out in the complaint, on the ground that the [23] complaint, and each alleged cause of action therein, fail to state a claim against said defendants or any of them upon which relief can be granted.

The foregoing motions, and each of them, are based upon the statement of reasons and points and authorities served and filed herewith, and upon all of the papers and documents on file in the above-entitled action.

Dated: Los Angeles, California, July 28, 1951.

VICTOR FORD COLLINS,
Attorney for Hollywood Baseball Association, a Corporation.

NORMAN S. STERRY,
HENRY F. PRINCE,
FREDERIC H. STURDY,
PHILIP C. STERRY,
GIBSON, DUNN & CRUTCHER,

By /s/ NORMAN S. STERRY,
Attorneys for Defendants Pacific Coast League of Professional Baseball Club, an Unincorporated Association; Los Angeles Baseball Club, a Corporation, Hollywood Baseball Association, a Corporation, and Clarence H. Rowland.

Affidavit of Service by Mail attached.

Receipt of copy acknowledged.

[Endorsed]: Filed July 30, 1951. [24]

[Title of District Court and Cause.]

MOTIONS TO DISMISS

Comes Now the defendant New York Yankees, Inc., and appearing specially and for itself alone and not for any of its co-defendants or any other person, firm or corporation, moves the court as follows:

1. To dismiss the action as to the said defendant upon the ground that the court does not have jurisdiction of its person, or in the alternative, to quash the issuance of summons against said defendant, and to quash the return of service of summons on said defendant upon each of the following grounds, and for each of the following reasons:

(a) That the said moving defendant New York Yankees, Inc., a corporation organized and existing under and by virtue of the laws of the State of New York, and is an inhabitant of said state and of the Southern District thereof. [26]

(b) That at the time of filing said suit and at the time of the issuance of summons and at the time of the purported service of summons, the said moving defendant New York Yankees, Inc., was not then or at any time thereafter and is not now an inhabitant of the Southern District of California.

(c) That at the time of filing said suit and at the time of the issuance of summons and the purported service thereof upon said moving defendant New York Yankees, Inc., said moving defendant was not then, or at any time thereafter, and is not now to be found in the Southern District of California.

(d) That at the time of filing said suit and at the time of the issuance of said summons and purported service thereof, the said moving defendant New York Yankees, Inc., did not transact any business in the Southern District of California and has not transacted any business at any time thereafter,

and is not now transacting any business in said state.

(e) That there was no authority of law for the service of process of summons upon the said defendant, New York Yankees, Inc., outside of the State of California, and the purported service of summons upon the said defendant in the City of New York, Southern District of New York, did not confer jurisdiction upon the court over or upon the person of the said defendant, New York Yankees, Inc.

(f) That there is no authority of law for the institution, maintenance or prosecution of this suit in this court in the Southern District of California against this moving defendant, New York Yankees, Inc., and the court had no jurisdiction to issue service directed to the said New York Yankees, Inc., and no jurisdiction, power or authority [27] to cause said process of summons to be served or purported to be served upon said moving defendant, New York Yankees, Inc., outside of the State of California.

2. To dismiss the action for improper venue upon the ground that it was brought in the wrong district because at the time of the filing of said suit the defendant was not then or at any time thereafter, and is not now an inhabitant of the Southern District of California, nor was it at the time of filing said suit or of the purported service of summons upon it, or at any time thereafter, to be found within the said Southern District of California, nor did it at the time of the filing of said suit or at the

time of the purported service of summons upon it, or at any time thereafter, nor does it now, transact any business within the Southern District of California.

Said motions, and each of them, will be made upon the grounds aforesaid, upon all the files and papers in said cause, including, but not limited to the purported return of service of summons and to the affidavits of George M. Weiss, Gordon L. Jones and Raoul Dedeaux served and filed herewith, and the reasons for and points and authorities in support of the said foregoing motions and each of them served and filed herewith.

The defendant New York Yankees, Inc., in the event that the said preceding motions should be denied, appearing for itself alone and not for any of its co-defendants, or for any other person, firm or corporation, as aforesaid, moves the court as follows:

1. To dismiss the said action, and each cause of action set out in said complaint, on the ground that the court lacks jurisdiction over the subject-matter of the said cause of action.

2. To dismiss the action, and each cause of action set out in the complaint, on the ground that the complaint and each cause of action therein fails to state a claim against the moving defendant, New York Yankees, Inc., upon which relief can be granted. [28]

The foregoing motions will be made upon all the files and papers in said cause, and pursuant to the

stipulation of the parties hereto duly approved by the court, upon the reasons for and points and authorities filed in support of the motions by the co-defendants, Pacific Coast League of Professional Baseball Clubs, Los Angeles Baseball Club, Hollywood Baseball Association and Clarence H. Rowland.

Dated: Los Angeles, California, July 30, 1951.

NORMAN S. STERRY,
HENRY F. PRINCE,
FREDERIC H. STURDY,
PHILIP C. STERRY,
GIBSON, DUNN & CRUTCHER,

By /s/ NORMAN S. STERRY,
Attorneys for Defendant, New York Yankees, Inc., a Corporation.

Affidavit of Service by Mail attached.

Receipt of copy acknowledged.

[Endorsed]: Filed July 30, 1951. [29]

[Title of District Court and Cause.]

STIPULATION AND ORDER

It Is Stipulated by and between the plaintiff George Earl Toolson and the defendants so far served, to wit, Pacific Coast League of Professional Baseball Clubs, Los Angeles Baseball Club, Holly-

wood Baseball Association and Clarence H. Rowland, hereinafter in this stipulation referred to as the "local defendants," and the defendant New York Yankees, Inc., as follows:

(1) The local defendants who have appeared in said action, each separately for itself or himself, and have filed a motion to dismiss the complaint and each cause of action therein stated upon the ground (a) that the Court lacks jurisdiction over the subject matter of the cause and (b) that the complaint and each cause of action therein contained fails to state a claim upon which relief can be granted, which said motion will hereafter for brevity of designation be referred to as "the motion of the local defendants."

(2) The defendant New York Yankees, Inc., appeared separately [31] and specially, and filed a motion (a) to dismiss the complaint and each cause of action therein contained or, in the alternative, to quash the issuance of summons against said defendant and to quash the return of service upon the grounds stated in said motion; (b) to dismiss the action for improper venue; which said motions will be referred to for brevity and convenience as "the venue motions." Said defendant New York Yankees, Inc., also, in the event of the said venue motions being denied, moved to dismiss the cause of action upon the ground (a) that the Court lacks jurisdiction over the subject matter of the cause of action, and (b) the complaint and each cause of action fail to state a claim against the defendant

New York Yankees, Inc., upon which relief can be granted; which said motion will, for brevity and convenience, be referred to as the "second New York Yankees motion."

(3) The local defendants, in support of their said motion have served and filed printed points and authorities.

(4) The defendant New York Yankees, Inc., in support of its venue motions has served and filed typewritten points and authorities, and as to its second motion has, by stipulation of the parties approved by the Court, adopted the printed points and authorities of the said local defendants.

(5) On August 10, 1951, by order of court on stipulation of the parties duly and regularly made, the time within which the plaintiff could answer the points and authorities of the local defendants and of the defendant New York Yankees, Inc., was duly and regularly enlarged and extended to and including September 30, 1951, and the time within which the said defendants could file their reply or answering points and authorities was enlarged and extended to and including the 15th day of November, 1951.

(6) Counsel for plaintiff, in drafting his points and authorities has reached the conclusion that he is satisfied with the complaint so far as the venue motions are concerned, and is [32] also satisfied with the complaint so far as the motions of the local defendants are concerned, except that he desires to

amend his complaint by adding thereto certain averments to his complaint.

Now Therefore, It Is Stipulated by and between the parties, through their respective counsel, as follows:

1. In order to expedite the matter and not unnecessarily to encumber the record, the plaintiff shall file his answering points and authorities on or before the 30th day of September, 1951, as provided by the stipulation of the parties and the order of Court, and if he so desires he may simultaneously or at any time prior thereto file an amendment to the complaint or to any or all of the causes of action therein set forth, adding any averments or allegations to any one or all of the said causes of action that he may desire. It is further stipulated that if he desires that any of the averments added to the first or second cause of action may likewise be added to the succeeding cause or causes of action by reference, any amendment to the complaint or any cause of action therein contained shall be deemed to have been originally contained in the complaint.

2. The term "amended complaint" shall refer to the original complaint plus the said amendments thereto which may be filed under and pursuant to this stipulation and agreement, and it is stipulated and agreed that the said several motions of the defendants shall be deemed to have been made to the said amended complaint.

3. The said respective defendants shall have the

same time as now provided by said stipulations and order of Court within which to file their reply points and authorities, to wit, November 15, 1951.

4. Said defendants do not contemplate that they will desire to make any further or additional motions to the said complaint but do not by this stipulation desire to waive their right to do so should it appear necessary to them so to do. It is, therefore, further [33] stipulated and agreed that in the event the said defendants or any of them should desire to make any motion to strike said amendments or any portion of them, or to make said amendments or any portion of them more definite or certain, said defendants shall nevertheless file their answering points and authorities within the time herein provided and shall simultaneously, or on or before filing the same, file their motions either to strike or make more definite or certain together with points and authorities thereto. In said event, the plaintiff shall have ten days in which to reply to such points and authorities, and the defendants shall have ten days in which to file their answering points and authorities.

5. It is specifically stipulated and agreed that the fact that the defendant New York Yankees, Inc., has signed this stipulation by its respective counsel shall not constitute any joint appearance of said New York Yankees, Inc., with the other said defendants.

Dated: Los Angeles, California, September 17th, 1951.

HARRY W. T. ROSS,
GENE M. HARRIS,
HOWARD C. PARKE,
By /s/ HOWARD C. PARKE,
Attorneys for Plaintiff.

VICTOR FORD COLLINS,
Attorney for Hollywood Baseball Association, a Corporation.

NORMAN S. STERRY,
HENRY F. PRINCE,
FREDERIC H. STURDY,
PHILIP C. STERRY,
GIBSON, DUNN & CRUTCHER,
By /s/ NORMAN S. STERRY,
Attorneys for Defendants Pacific Coast League of Professional Baseball Clubs, an Unincorporated Association; Los Angeles Baseball Club, a Corporation; Hollywood Baseball Association, a Corporation, and Clarence H. Rowland. [34]

NORMAN S. STERRY,
HENRY F. PRINCE,
FREDERIC H. STURDY,
PHILIP C. STERRY,
GIBSON, DUNN & CRUTCHER,
By /s/ NORMAN S. STERRY,
Attorneys for Defendant New York Yankees, Inc., a Corporation.

ORDER

It Is So Ordered.

Dated: September 17, 1951.

/s/ BEN HARRISON,
Judge, United States District Court.

[Endorsed]: Filed September 17, 1951. [35]

[Title of District Court and Cause.]

AMENDMENT TO PLAINTIFF'S COMPLAINT

Comes now the plaintiff, George Earl Toolson, by Harry W. T. Ross, Gene M. Harris and Howard C. Parke, his attorneys and, pursuant to stipulation of the parties and order of the Court dated September 7, 1951, makes this amendment to plaintiff's complaint on file herein.

To plaintiff's second cause of action, plaintiff adds:

II.

2. The plaintiff adopts by reference, and incorporates herein as though set out in full subparagraphs 2 through 10, inclusive, of paragraph II of plaintiff's third cause of action.

II-A.

That defendants and those combined with them in said illegal combination have acted in full accordance and fidelity with the terms of the agrement set

forth in paragraph II hereof, that by reason of the combination thereunder the defendants and [36] those combined with them in said illegal combination control and own all of the players in professional baseball, control all of the teams in professional baseball and control all of the games and exhibitions thereof, including exhibition by radio and television among the several states of the United States; that as a result of said combination the defendants baseball club and those combined with them refuse to authorize a radio broadcast of such club's games to be made from a radio station located outside the home territory of that club and within the home territory of another club, during the time that such other club is playing a home game, unless such other club has prior thereto consented to the broadcast of said game or of any game of another club in a comparable league, during said time from a station located within its home territory; that as a result of said combination defendant baseball clubs and those combined with them have refused to authorize a telecast of the games of such clubs to be made from a station located outside of home territory within the home territory of another club, during the time that (a) a home game of such other club is being played or (b) the away from home game is being telecast from any television station or stations located within the home territory of such club, unless such other club has prior thereto consented to the telecast of said game or of any game of another club in a comparable league, during said time from a station located

within its home territory; that within said combination the words "home territory" shall mean and include with respect to any baseball club, the territory included within the circumference of a circle having a radius of 50 miles, with the center of the baseball park of such baseball club, that as a result of such combination the defendant and those combined with them have greatly lessened and eliminated all competition in the exhibition of baseball games by broadcasting or televising among the several states; that the place, time, quality of game exhibited, area within which said exhibit is to be sent have been and are [37] strictly controlled by the defendants and by those combined with them in said illegal combination; by reason of the foregoing the defendants and those combined with them have illegally restrained interstate commerce in the exhibition of baseball games, competition therein is greatly lessened and destroyed and an illegal monopoly has been established all in violation of the anti-trust laws of the United States to the damage of the plaintiff as hereinafter set forth.

To plaintiff's third cause of action plaintiff adds:

II-A

That defendant and those combined with them in said illegal combination have acted in full accordance and fidelity with the terms of the agreement set forth in Paragraph II hereof; that by reason of the combination thereunder the defendants and those combined with them in said illegal combination control and own all of the players in profes-

sional baseball, control all of the teams in professional baseball and control all of the games and exhibitions thereof, including exhibition by radio and television among the several states of the United States; that as a result of said combination the defendant baseball clubs and those combined with them refuse to authorize a radio broadcast of such club's games to be made from a radio station located outside the home territory of that club and within the home territory of another club, during the time that such other club is playing a home game, unless such other club has prior thereto consented to the broadcast of said game or of any game of another club in a comparable league, during said time from a station located within its home territory; that as a result of said combination defendant baseball clubs and those combined with them have refused to authorize a telecast of the games of such clubs to be made from a station located outside of home territory within the home territory of another club, during the time that (a) a home game [38] of such other club is being played or (b) the away-from-home game is being telecast from any television station or stations located within the home territory of such club, unless such other club has prior thereto consented to the telecast of said game or of any game of another club in a comparable league, during said time from a station located within its home territory; that within said combination the words "home territory" shall mean and include with respect to any baseball club, the territory included within the

circumference of a circle having a radius of 50 miles, with the center of the baseball park of such baseball club, that as a result of such combination the defendant and those combined with them have greatly lessened and eliminated all competition in the exhibition of baseball games by broadcasting or televising among the several states; that the place, time, quality of game exhibited, area within which said exhibit is to be sent have been and are strictly controlled by the defendants and by those combined with them in said illegal combination; by reason of the foregoing the defendants and those combined with them have illegally restrained interstate commerce in the exhibition of baseball games, competition therein is greatly lessened and destroyed and an illegal monopoly has been established all in violation of the anti-trust laws of the United States to the damage of the plaintiff as hereinafter set forth.

Dated September 24, 1951.

HARRY W. T. ROSS,

GENE M. HARRIS,

HOWARD C. PARKE,

By /s/ HOWARD C. PARKE,

Attorneys for Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 27, 1951. [39]

[Title of District Court and Cause.]

OPINION

HARRY W. T. ROSS,
GENE M. HARRIS, and
HOWARD C. PARKE, ESQS.,
Attorneys for Plaintiff. [41]

VICTOR FORD COLLINS, ESQ.,
Attorney for Hollywood Baseball Association.

GIBSON, DUNN & CRUTCHER, ESQS.,
NORMAN S. STERRY, ESQ.,
HENRY F. PRINCE, ESQ.,
PHILIP C. STERRY, ESQ.,
Attorneys for Defendants Pacific Coast League of Professional Baseball Clubs, Los Angeles Baseball Club, Hollywood Baseball Association and Clarence H. Rowland.

Plaintiff brings this action under the provisions of the Sherman Act, 26 Stat. 209, 15 U.S.C.A., Sections 1 and 2, and the Clayton Act, 38 Stat. 741, 15 U.S.C.A., Section 15. He alleges that he was, and now is, a professional baseball player and that as a result of the alleged monopoly, to which all defendants are allegedly party, he has been deprived of his livelihood. Plaintiff was under contract with the Newark International Baseball Club, Inc., which club assigned his contract to the Binghamton Exhibition Company, Inc. As a result of plaintiff's

refusal to report to the latter club, and pursuant to the provisions of his contract with the Newark team and the regulations which govern the structure of "Organized Baseball" in general, he was placed on the "ineligible list" of the Binghamton team, and, defendants, because of this, have refused and still do refuse to allow plaintiff to play professional baseball.

The allegations of plaintiff's complaint with respect to the alleged monopoly to which the defendants are parties do not vary materially from those before the Supreme Court in Federal Baseball Club of Baltimore, Inc., v. National League of Professional Baseball Clubs, et al., 259 U.S. 200, 42 S.Ct. 465, 66 L.Ed. 898, 26 A.L.R. 357, and those before the Second Circuit in Gardella v. Chandler, 172 F. 2d 402. The structure of "Organized Baseball" is therein [42] outlined, and provisions of the Major-Minor League agreement pertaining to player contracts are listed. In addition, plaintiff, as did his counter part in the Gardella case, supra, emphasizes the broadcasting of baseball exhibitions through the media of radio and television, alleging that receipts from these activities exceed the sum of twenty per cent of the net profits of professional baseball each year.

All the defendants have moved to dismiss the action on the ground that the court lacks jurisdiction of the subject matter of the action and that the complaint does not state a claim upon which relief can be granted. Defendant New York Yankees, Inc., has also moved to dismiss on additional

grounds that are not pertinent here in view of my ruling on the question of jurisdiction of the subject matter. To me, the simple issue of this case is whether the game of baseball is "trade or commerce" within the meaning of the Anti-Trust Acts, and whether the structure known as "Organized Baseball" is engaged in such trade or commerce. The character of baseball, in the Federal Baseball Club case, was held to be not commerce or trade but sport. Mr. Justice Holmes for a unanimous court stated: "The business is giving exhibitions of baseball, which are purely state affairs." The decision of the Court of Appeals, said Justice Holmes, "went to the root of the case." In its opinion the Court of Appeals stated:

> "The fact that the appellants produce baseball games as a source of profit, large or small, cannot change the character of the game. They are still sport, not trade."
>
> (National League of Professional Baseball Clubs, et al., v. Federal Baseball Club of Baltimore, Inc., 269 F. 681.)

Since the decision in the Federal Baseball Club case, supra, it has been cited with approval three times by the Supreme Court. (Hart v. B. F. Keith Vaudeville Exchange, et al., 262 U.S. 271, 273 (1923) 43 S.Ct. 540, 67 L. Ed. 977; U. S. v. South-Eastern Underwriters Assn., 322 U.S. 533, L. Ed. 1440, 64 S. Ct. 1162; North American Company v. Securities and Exchange Commission 327 U.S. 686, 694, [43] 66 S. Ct. 785, 90 L. Ed. 945 (1946). It has been

cited at least six times by the Courts of Appeal, (United States v. Fur Dressers' & Fur Dryers' Assn., 5 F. 2d 869, 873 (1925); Hart v. B. F. Keith Vaudeville Exchange et al., 12 F. 2d 341, 47 A.L.R. 775 (1926); Boynton v. Fox West Coast Theatres, 60 F. 2d 851, (1932); Neugen v. Associated Chautauqua Company, 70 F. 2d 905, (1934); Conley v. San Carlo Opera Co., 163 F. 2d 310, 311 (1947), a Second Circuit case in which Judge Frank joined; and Martin, et al., v. National League Baseball Club, 174 F. 2d 917, 919, (1949). The District Courts have cited it at least seven times, (Federal Trade Commission v. Smith, 1 Fed. Supp. 247, 250, (1932); In re American State Public Service Co., 12 Fed. Supp. 667 (1935); S. E. C. v. Electric Bond and Share Co., 18 Fed. Supp. 131, 146 (1937); Niemiec v. Seattle Rainier Baseball Club, Inc., 67 Fed Supp. 705 (1946); San Carlo Opera Co. v. Conley, 72 Fed. Supp. 825 (1946); McComb v. Turpin, 81 Fed. Supp. 86 (1948); Young v. Kellax Corp., 82 Fed. Supp. 953, 961 (1948). The only decision directly challenging its present day validity is Gardella v. Chandler, supra, in which only one of the members of that court unqualifiedly held baseball today to be engaged in interstate commerce. He was relying on the radio and televising aspects of the game, over the former method of telegraphing the game play by play.

Plaintiff seeks to have this court disregard an adjudication made thirty years ago by the Supreme Court. I am bound by the decision of the Supreme Court. It is not my function to disregard such a

decision because it is old. If the Supreme Court was in error in its former opinion or changed conditions warrant a different approach, it should be the court to correct the error. Trial courts in my opinion should not devote their efforts to guessing what reviewing courts may do with prior holdings because of lapse of time or change of personnel on such courts. We are supposed to be living in a land of laws. Stability in law requires respect for the decisions of controlling courts or face chaos.

The words of Judge Chase in the Gardella case seem to me [44] state my position clearly when he said:

> "In dealing with such a unique aggregate as organized baseball with a decision in respect to it which seems to be directly in point on the facts, we should not be astute in seeking to anticipate that the court which has the power to do so will change that decision. To do so would not only be an unwarranted attempt to usurp the authority of that court but would make its task in general more difficult since it would lead to a constant alteration in the lower courts of its decisions on specific fact situations in the light of what would appear to be differing rules stated in the course of deciding later cases on different facts."

Undoubtedly large investments have been made on the strength of Mr. Justice Holmes' opinion in the Federal Baseball Club case, supra, and now a slight shadow has been placed upon the status of

such clubs by the Gardella case, supra, by the opinion of Judge Frank wherein he assumes the role of crystal gazer in attempting to determine in advance that the Supreme Court is going to in effect reverse the Federal Baseball Club case.

It is a matter of common knowledge that the status of organized baseball is the subject of a congressional hearing and it may pass legislation that will be determinative of the issue before this court. I believe it is my clear duty to endeavor to be a judge and should not assume the function of a pseudo legislator. It must be remembered that judicial decisions operate retroactively.

If the Federal Baseball Club case is, as Judge Frank intimates, an "impotent zombi," I feel that it is not my duty to so find but that the Supreme Cour should so declare.

The above-entitled action is hereby ordered dismissed for want of jurisdiction of the subject matter.

Dated: This 6th day of November, 1951.

/s/ BEN HARRISON,
Judge.

[Endorsed]: Filed November 6, 1951. [45]

District Court of the United States, Southern District of California, Central Division

Civil Action No. 13070-BH

GEORGE EARL TOOLSON,

Plaintiff,

vs.

NEW YORK YANKEES, INC., a Corporation; AMERICAN LEAGUE OF PROFESSIONAL BASEBALL CLUBS, an Unincorporated Association; NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, an Unincorporated Association; NATIONAL ASSOCIATION OF PROFESSIONAL BASEBALL LEAGUES, an Unincorporated Association; GEORGE M. TRAUTMAN; PACIFIC COAST LEAGUE OF PROFESSIONAL BASEBALL CLUBS, an Unincorporated Association; HOLLYWOOD BASEBALL ASSOCIATION, a Corporation; LOS ANGELES BASEBALL CLUB, a Corporation; BINGHAMTON EXHIBITION COMPANY, INC., a Corporation; CLARENCE H. ROWLAND,

Defendants.

ORDER OF DISMISSAL

All the defendants served in the action, to wit, New York Yankees, Inc., a corporation; Pacific Coast League of Professional Baseball Clubs, an unincorporated association; Los Angeles Baseball

Club, a corporation, Hollywood Baseball Association, a corporation, and Clarence H. Rowland, have appeared and moved to dismiss the action, and each cause of action set out in the complaint as amended by the amendment filed thereto (hereinafter referred to collectively as the "amended complaint"), on the ground that the Court is without jurisdiction of the subject matter of the [46] action, and on the ground that the amended complaint, and each cause of action therein contained, fails to state a claim upon which relief can be granted. The defendant, New York Yankees, Inc., has also moved to dismiss the action as to it upon the ground that the Court does not have jurisdiction of the person of said defendant, or in the alternative, to quash the issuance of summons against said defendant and to quash the return of service of summons on said defendant upon various grounds and to dismiss the action for improper venue; said separate motion of the defendant New York Yankees, Inc., being hereinafter referred to as the "New York Yankees, Inc., venue motion."

All of said motions have been submitted to the Court on the points and authorities filed by the respective parties.

The Court having carefully considered the points and authorities and carefully studied the amended complaint and being of the opinion that it is unnecessary to pass upon the separate venue motion of the New York Yankees, Inc., because said motions of all of the defendants above-recited are well taken and should be granted;

Now, Therefore, by virtue of the premises and the law, It Is Ordered, Adjudged and Decreed:

That the said action, and each cause of action set forth in said amended complaint, be, and the same is, dismissed on the ground that the Court does not have jurisdiction of the subject matter of said action and on the further ground that, if the Court did have jurisdiction of the subject matter of said action, or of any cause of action set forth in the amended complaint, the said amended complaint does not, nor does any cause of action therein set forth, state a claim upon which relief can be granted.

Done in Open Court this 27th day of Nov., 1951.

/s/ BEN HARRISON,
Judge, United States
District Court. [47]

Presented and Approved by:

VICTOR FORD COLLINS,
Attorney for Defendant Hollywood Baseball Association.

NORMAN S. STERRY,
HENRY F. PRINCE,
FREDERIC H. STURDY,
PHILIP C. STERRY,
GIBSON, DUNN & CRUTCHER,
By /s/ NORMAN S. STERRY,
Attorneys for Defendants New York Yankees, Inc., Pacific Coast League of Professional Baseball Clubs, Los Angeles Baseball Club, Hollywood Baseball Association, and Clarence H. Rowland.

Approved as to Form by:

HARRY W. T. ROSS,

GENE M. HARRIS,

HOWARD C. PARKE,

By /s/ HOWARD C. PARKE,

Attorneys for Plaintiff.

Receipt of Copy Acknowledged.

[Endorsed]: Filed November 28, 1951.

Docketed and entered November 28, 1951. [48]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that George Earl Toolson, Plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order of Dismissal entered in this action on the 28th day of November, 1951.

Dated: December 5, 1951.

HARRY W. T. ROSS,

GENE M. HARRIS,

HOWARD C. PARKE,

By /s/ HOWARD C. PARKE,

Attorneys for Plaintiff.

[Endorsed]: Filed December 12, 1951. [49]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

To the Defendant New York Yankees, Inc., and Its Attorneys, Norman S. Sterry, Henry F. Prince, Frederic H. Sturdy, Philip C. Sterry and Gibson, Dunn & Crutcher.

To the Defendants Pacific Coast League of Professional Baseball Clubs, an Unincorporated Association; Los Angeles Baseball Club, a Corporation; Hollywood Baseball Association, a Corporation, and Clarence H. Rowland, and Their Attorneys, Victor Ford Collins, Norman S. Sterry, Henry F. Prince, Frederic H. Sturdy, Philip C. Sterry and Gibson, Dunn & Crutcher:

You and each of you will please take notice that Plaintiff George Earl Toolson will rely on the following points on appeal, to wit:

1. That by virtue of the provisions of the Sherman Act, 26 Stat. 209, 15 U.S.C.A., Sections 1 and 2 and the Clayton Act, [50] 38 Stat. 741, 15 U.S.C.A., Section 15, The United States District Court has jurisdiction of the subject matter of the action and each cause of action set forth in Plaintiff's Complaint as amended.

2. That by virtue of the provisions of the Sherman Act, 26 Stat. 209, 15 U. S. C. A, Sections 1 and 2 and the Clayton Act, 38 Stat. 741, 15 U. S. C. A., Section 15, the Plaintiff's complaint as amended and

each cause of action therein set forth, state claims upon which relief can be granted by the United States District Court.

Dated this 24th day of December, 1951.

HARRY W. T. ROSS,

GENE M. HARRIS,

HOWARD C. PARKE,

By /s/ HOWARD C. PARKE,

Attorneys for Plaintiff.

Receipt of Copy Acknowledged.

[Endorsed]: Filed January 7, 1952. [51]

[Title of District Court and Cause.]

STIPULATION AND ORDER AS TO RECORD ON APPEAL

Whereas, on motion of the Defendants, the above-entitled court dismissed the above-entitled action on the 28th day of November, 1951.

Whereas, the Plaintiff on December 12, 1951, filed his Notice of Appeal from the said Order of Dismissal to the United States Court of Appeals for the Ninth Circuit.

Whereas, the parties hereto desire to stipulate as to the record on appeal in accordance with Rule 75 sub paragraph (f) of the Federal Rules of Civil Procedure.

Now, Therefore, it is stipulated and agreed that the following listed parts of the record and proceedings are designated to be included in the record on appeal, to wit:

(1) The Complaint dated May 1, 1951.

(2) Stipulation dated June 15, 1951, extending time to appear of the Defendant New York Yankees, Inc. [52]

(3) Stipulation dated June 15, 1951, extending time to appear of the Defendants Pacific Coast League of Professional Baseball Clubs, Los Angeles Baseball Club, Hollywood Baseball Association and Clarence H. Rowland.

(4) Motion to Dismiss dated July 28, 1951, of the Defendants Pacific Coast League of Professional Baseball Clubs, Los Angeles Baseball Club, Hollywood Baseball Association and Clarence H. Rowland.

(5) Motion to Dismiss dated July 30, 1951, of the Defendant New York Yankees, Inc.

(6) Stipulation dated September 17, 1951, between the parties granting the Plaintiff the right to amend his Complaint.

(7) The Amendment to Plaintiff's Complaint dated September 24, 1951.

(8) Opinion of Judge Ben Harrison dated November 6, 1951.

(9) Order of Dismissal dated November 28, 1951.

(10) Notice of Appeal dated December 5, 1951.

(11) This Stipulation designating the record.

(12) Statement of Points upon which appellant intends to rely on this Appeal, served and filed herewith.

Dated: January 7, 1952.

HARRY W. T. ROSS,
GENE M. HARRIS,
HOWARD C. PARKE,
By /s/ HOWARD C. PARKE.

VICTOR FORD COLLINS,
Attorney for Hollywood Baseball Association, a Corporation. [53]

NORMAN S. STERRY,
HENRY F. PRINCE,
FREDERIC H. STURDY,
PHILIP C. STERRY,
GIBSON, DUNN & CRUTCHER,
By /s/ NORMAN S. STERRY,
Attorneys for Defendants, Pacific Coast League of Professional Baseball Clubs, an Unincorporated Association; Los Angeles Baseball Club, a Corporation; Hollywood Baseball Association, a Corporation, and Clarence H. Rowland.

NORMAN S. STERRY,
HENRY F. PRINCE,
FREDERIC H. STURDY,
PHILIP C. STERRY,
GIBSON, DUNN & CRUTCHER,

By /s/ NORMAN S. STERRY,
Attorneys for Defendant, New York Yankees, Inc., a Corporation.

ORDER

[Endorsed]: Filed January 7, 1952. [54]

/s/ BEN HARRISON,
Judge of the United States District Court.

[Endorsed]: Filed January 7, 1952.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 54, inclusive, contain the original Complaint; Two Stipulations and Orders filed June 20, 1951, extending time to plead; Motion of defendants Pacific Coast League of Professional Baseball Clubs, et al., to Dismiss; Motions of New York Yankees, Inc., to Dismiss; Stipulation and

Order filed Sept. 17, 1951, permitting amendment to complaint etc.; Amendment to Complaint; Opinion; Order of Dismissal; Notice of Appeal; Statement of Points on Appeal and Stipulation as to the Record on Appeal which constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to $2.00, which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 9th day of January, A.D. 1952.

[Seal] EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 13228. United States Court of Appeals for the Ninth Circuit. George Earl Toolson, Appellant, vs. New York Yankees, Inc., et al., Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed January 10, 1952.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals for the Ninth Circuit

No. 13228

GEORGE EARL TOOLSON,

Plaintiff,

vs.

NEW YORK YANKEES, INC., a Corporation, et al.,

Defendants.

STIPULATION

Whereas the parties hereto are in agreement that all of the original certified record from the District Court is material to the consideration of the appeal or review in the above-entitled matter;

Now Therefore, pursuant to Rule 19 (6) of the Rules of the above-entitled Court it is hereby stipulated that the parties hereto, by and through their respective counsel, designate all of the original certified record as material to the consideration of the appeal or review in the above-entitled matter, and request that the Clerk print all of said record.

Dated: This 18th day of January, 1952.

HARRY W. T. ROSS,

GENE M. HARRIS,

HOWARD C. PARKE,

By /s/ HOWARD C. PARKE,

Attorneys for Plaintiff.

VICTOR FORD COLLINS,
Attorney for Hollywood Baseball Association, a Corporation.

NORMAN S. STERRY,
HENRY F. PRINCE,
FREDERIC H. STURDY,
PHILIP C. STERRY,
GIBSON, DUNN & CRUTCHER,

By /s/ NORMAN S. STERRY,
Attorneys for Defendants, Pacific Coast League of Professional Baseball Clubs, an Unincorporated Association; Los Angeles Baseball Club, a Corporation; Hollywood Baseball Association, a Corporation, and Clarence H. Rowland.

NORMAN S. STERRY,
HENRY F. PRINCE,
FREDERIC H. STURDY,
PHILIP C. STERRY,
GIBSON, DUNN & CRUTCHER,

By /s/ NORMAN S. STERRY,
Attorneys for Defendant, New York Yankees, Inc., a Corporation.

[Endorsed]: Filed January 21, 1952.

No. 13228

United States
Court of Appeals
For the Ninth Circuit

GEORGE EARL TOOLSON,

Appellant.

vs.

NEW YORK YANKEES, INC., et al.,

Appellees.

Appeal from the United States District Court for the Southern District of California, Central Division.

Proceedings Had in the United States Court of Appeals for the Ninth Circuit

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

United States Court of Appeals
for the Ninth Circuit

[Title of Cause.]

Excerpt from Proceedings of Wednesday, December 10, 1952.

Before: Mathews, Healy and Pope,
Circuit Judges.

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. Howard C. Parks, counsel for appellant, and by Mr. Norman S. Sterry, counsel for appellees, and submitted to the court for consideration and decision.

United States Court of Appeals
for the Ninth Circuit

[Title of Cause.]

Excerpt from Proceedings of Friday, December 12, 1952.

Before: Mathews, Healy and Pope,
Circuit Judges.

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT

Ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accord-

United States Court of Appeals
for the Ninth Circuit

No. 13,228

Dec. 12, 1952

GEORGE EARL TOOLSON,

Appellant,

vs.

NEW YORK YANKEES, INC., et al.,

Appellees.

Appeal from the United States District Court for the Southern District of California, Central Division

Before: Mathews, Healy and Pope,
Circuit Judges.

PER CURIAM

On the grounds and for the reasons stated in its opinion (Toolson v. New York Yankees, D.C.S.D. Cal., 101 F. Supp. 93), the order of the District Court is affirmed.

[Endorsed]: Per Curiam Opinion. Filed Dec. 12, 1952. Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

No. 13228

GEORGE EARL TOOLSON,

Appellant.

vs.

NEW YORK YANKEES, INC., et al.,

Appellee.

JUDGMENT

Appeal from the United States District Court for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the order of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered December 12, 1952.

United States Court of Appeals
for the Ninth Circuit

CERTIFICATE OF CLERK, U. S. COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Court of Appeals for the Ninth Circuit, do hereby certify the foregoing 63 pages, numbered from and including 1 to and including 63, to be a full, true and correct copy of the entire record of the above-entitled case in the said Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 18th day of February, 1953.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1952

No. 647

GEORGE EARL TOOLSON, Petitioner,

vs.

NEW YORK YANKEES, INC., et al.

ORDER ALLOWING CERTIORARI—Filed May 25, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of Pennsylvania for "jumping" the specially phrased "reserve clause" in the contracts of the Philadelphia National Club.

58. Connie Mack, the manager of The Athletics, who had likewise "jumped" the reserve clause in his days as a player to join The Brotherhood, arranged for the "trade" of Lajoie to the Cleveland Club of the American League and he remained idle in obedience to the injunction for the balance of the season of 1902, whenever his new club played The Athletics in Philadelphia.

59. Upon the official establishment of "peace" between the National League and the American League under the National Agreement of 1903, the form of the "reserve clause" upheld in the Lajoie case was not adopted and instead, the construction of the right of reservation laid down prior to the passage of the Sherman Anti-Trust Law in the Ewing opinion was followed by Organized Baseball.

60. Its governing body, The National Commission, recognized the right of all of its players to join an independent organization upon the expiration of their contracts and to be reinstated upon application to the National Commission after their contracts with the clubs in the independent organizations had terminated; and this right of the players [fol. 12] was explicitly upheld during disagreements or "Wars" between the National Commission and the then existing Tri-State League and the Pacific Coast League.

61. The National Commission, a three man body, governed Organized Baseball under The National Agreement until January 12, 1921.

62. Throughout this period, August Herrmann was its Chairman and also the President of The Cincinnati Exhibition Company, the predecessor corporation as owner of "The Reds" of the defendant, Cincinnati Baseball Club Company.

63. The other two members of the National Commission were the President of the American League, Ban Johnson, and the successive Presidents in turn of the National League, Harry C. Pulliam, Thomas J. Lynch, John K. Tener and John A. Heydler.

64. John K. Tener during his tenure as a Baseball executive was likewise Governor of Pennsylvania and had a first